

of Illinois, Iowa, and Missouri must be received by October 5, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 6, 1977, the Fish and Wildlife Service published a notice in the *FEDERAL REGISTER* (42 FR 28903-28904) to the effect that a review of the status of 12 turtles was being conducted. The Illinois mud turtle was included as part of the review. As a result of the notice of review, responses were received from the Missouri Department of Conservation, the Illinois Department of Conservation, and professional biologists. The comments and supportive documents have been reviewed and a summary is presented below. This information has been considered and is incorporated into the administrative record of this proposal.

Carl R. Noren, Director of the Missouri Department of Conservation, noted that to the best of meager information available on Missouri distribution, the turtle may be endangered. The Illinois mud turtle is listed as rare on the State list.

Vernon M. Kleen, Division of Wildlife Resources of the Illinois Department of Conservation, agreed on behalf of the State that the Illinois mud turtle should be listed as endangered under provisions of the Endangered Species Act of 1973. Mr. Kleen stated that the Department of Conservation was in the process of drafting a proposal to the Interior Department to place this species on the U.S. list when the notice of review appeared in the *FEDERAL REGISTER*.

The five biologists that commented on the status of this turtle all noted its rarity and apparent decline. Those that recommended a status recommended that it be listed as endangered.

As a result of the notice of review, Dr. Lauren Brown and Dr. Don Moll of Illinois State University submitted an extensive report to the Office of Endangered Species entitled "A Report on the Status of the Nearly Extinct Illinois Mud Turtle (*Kinosternon*

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered Status and Critical Habitat for the Illinois Mud Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Illinois mud turtle (*Kinosternon flavescens spooneri*) to be an endangered species and to identify critical habitat for this species. This action is being taken because the habitat where this species dwells is subject to intense alteration, and collection of individuals is a threat to the continued survival of this turtle. The proposed action, if completed, would protect the populations of this turtle and its habitat. The Illinois mud turtle is known from at least three populations in Illinois and Iowa; historically it is also known from Missouri.

DATES: Comments from the public must be received by September 5, 1978. Comments from the Governors

non flavescens spooneri Smith 1951) With Recommendations for its Conservation." This report completely summarizes all presently known information on the status of this turtle, its distribution, and its causes of decline. This report emphasizes the need for Federal protection via endangered status and determination of critical habitat.

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) states:

General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the act. These factors, and their application to the Illinois mud turtle, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—At one time, the Illinois mud turtle was much more widespread than at present. Of the 13 reported populations, only 5 are now thought to have turtles; of these, 1 population may be introduced and another may not be reproducing itself. The turtle requires a sand substrate, a semipermanent or permanent unpolluted body of water, and freedom from human disturbance. However, industrial, agricultural, and recreational modifications of suitable habitat greatly reduced the known populations of this species in the past and continue to threaten to do so at present as remaining ponds are located in the vicinity of extensive human activity.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—The rarity of this turtle and its inoffensive nature make this species desirable among turtle enthusiasts. While no major commercial activity is involved in its exploitation, a number of amateurs made collecting trips to known localities to secure a specimen after a popular article appeared recently. Any removal of turtles not in connection with research or their conservation is detrimental to the continued survival of the species.

3. *Disease or predation.*—Predation by natural or feral animals may be contributing to the decline of the species in certain areas, especially during nesting activity or incubation of the eggs.

4. *The inadequacy of existing regulatory mechanisms.*—Not applicable.

5. *Other natural or manmade factors affecting its continued existence.*—Dumping poisonous chemicals into certain ponds inhabited by the Illinois mud turtle may be proving detrimental to the populations inhabiting them. In addition, fluctuations of the water level in ponds inhabited by this species may also be proving deleterious. Both these activities have been known to occur in the past.

CRITICAL HABITAT

Section 7 of the act, entitled "Inter-agency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "Critical Habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the *FEDERAL REGISTER* of January 4, 1978 (43 FR 870-876), and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for inter-agency cooperation as published in the January 4, 1978, *FEDERAL REGISTER* (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

With respect to the Illinois mud turtle, the areas proposed as critical habitat satisfy all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species. Nesting and successful incubation of eggs occurs on sand areas adjacent to the ponds. Shelter and hibernation sites are present both in the ponds and on adjacent lands. Organisms in the ponds provide food for the turtles and aquatic vegetation probably provides sufficient cover from disturbance. The population inhabiting the Iowa locality is self-sufficient and reproducing; sufficient areas for normal growth of both the population and individual turtles are provided within the proposed critical habitat.

Critical habitat of the Illinois mud turtle, exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species, is proposed as follows: Illinois, Mason County. A circular area with a 1 mile radius, the center being a point on Sand Ridge Road 1 mile west of its junction with Cactus Drive; Iowa, Muscatine and Louisa Counties. (1) W½ Section 34 T76N R2W, (2) an area including Spring Lake plus 100 meters inland around the shores of Spring Lake in Section 33T76N R2W, (3) W½ Section 3 T75N R2W, (4) E½ Section 4 T75N R2W, (5) NE¼ Section 9 T75N R2W.

The areas proposed do not necessarily include the entire critical habitat of this turtle, and modifications to critical habitat descriptions may be proposed in the future. In accordance with section 7 of the act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of the critical habitat of the Illinois mud turtle.

All Federal departments and agencies shall, in accordance with section 7 of the act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect critical habitat. Consultation pursuant to section 7 should be carried out using the procedures contained in the January 4, 1978, *FEDERAL REGISTER* (43 FR 870-876).

EFFECT OF THE RULEMAKING

In Addition to the effects discussed above, the effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations referred to above, which pertain to endangered species, are found at § 17.21 of Title 50, and are summarized below.

With respect to the Illinois mud turtle in the United States, all prohibitions of section 9(a)(1) of the act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such

wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the *FEDERAL REGISTER* of September 26, 1975 (40 FR 44412), provided for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the act, the Director will notify the Governors of Illinois, Iowa, and Missouri with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any endangered or threatened

species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location or the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 7 of the act;

(3) Additional information concerning the range and distribution of this species.

Final promulgation of the regulations on the Illinois mud turtle will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this

proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (202-343-7814).

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. Amend § 17.11 by adding, in alphabetical order under "Reptiles" the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Popula- tion	Known distribution	Portion endangered			
Reptiles:							
Turtle, Illinois mud.....	<i>Kinosternon flavescens spooneri</i>	NA	U.S.A. (Illinois, Iowa, and Missouri).	Entire.....	E	

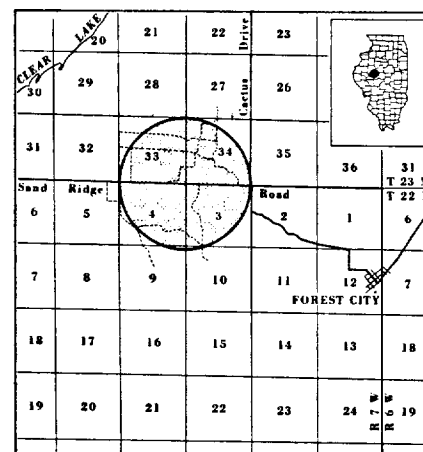
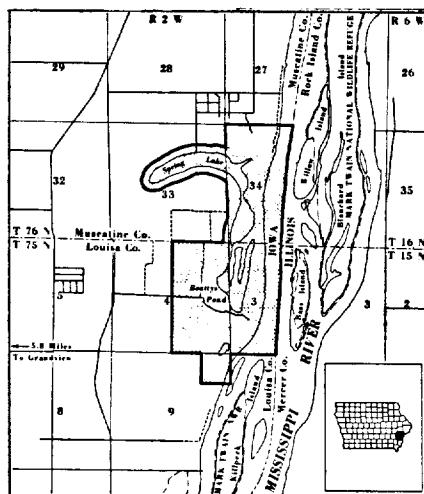
§ 17.95 [Amended]

2. Also, the Service Proposes to amend § 17.95(c) by adding Critical Habitat of the Illinois mud turtle after that of the Key mud turtle as follows:

(c) Reptiles. * * *

ILLINOIS MUD TURTLE (*Kinosternon flavescens spooneri*)

Illinois Mason County. A circular area with 1 mile radius, the center being a point on Sand Ridge Road 1 mile west of its junction with Cactus Drive; Iowa, Muscatine and Louisa Counties.—(1) W½ Section 34 T76N R2W, (2) an area including Spring Lake plus 100 meters inland around the shores of Spring Lake in Section 33 T76N R2W, (3) W½ Section 3 T75N R2W, (4) E½ Section 4 T75N R2W, (5) NE ¼ Section 9 T75N R2W.



NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 23, 1978.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.